

PJS:MJB:all

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>NORMAN N. SHELTON,</b>	:	<b>CIVIL NO. 4:CV-11-0368</b>
<b>Plaintiff</b>	:	
	:	<b>(Nealon, J.)</b>
<b>v.</b>	:	
	:	
<b>BLEDSON, et al.,</b>	:	
<b>Defendants</b>	:	<b>Filed Electronically</b>

**STATEMENT OF MATERIAL FACTS**

The remaining defendants, Officer Whittaker, Lieutenant Heath, Officer Raup, Lieutenant Galletta, and Medical Examiner Potter, by and through their counsel and pursuant to Local Rule 56.1, hereby submit the following statement of material undisputed facts in support of their motion for summary judgment.

Plaintiff is advised that pursuant to Local Rule 56.1, all facts set forth in this statement will be deemed admitted unless controverted by Plaintiff with references to the record supporting Plaintiff's position.

**A. Remaining Allegations of the Amended Complaint.**

The remaining allegations of the Amended Complaint (Doc. No. 58), as identified in the August 10, 2010, Order of Court, are the following:

1. On August 30, 2009, Shelton was forced to go into a cell with a gang member, though he told staff that “it would not work out” between the two inmates. Am. Compl. (Doc. No. 58) at 2-3.
2. During a cell rotation on that same date, staff applied handcuffs to Shelton, and then his cellmate began to assault him. Id. at 3.
3. Shelton alleges that staff stood and watched the assault for three minutes without attempting to stop it. Id.
4. After his cellmate stopped assaulting him, Officers Raup and Whittaker and Lieutenant Heath entered the cell, slammed him to the ground while he was handcuffed, and sprayed him in the face with “gas.” Id.
5. Shelton lists his claims as excessive use of force, denial of medical care and racial discrimination. Id.

Shelton sets forth the following specific allegations against each of the remaining defendants:

6. Lt. Heath placed her knee on the back of Shelton’s neck, allegedly cutting off his breathing. Id. at 4.

7. Officer Whittaker slammed Shelton into the floor while Shelton was handcuffed and punched and kicked him. Id.
8. Officer Raup punched and kicked Shelton, and when Shelton yelled that he could not breath, Officer Raup made a comment that they wanted him to suffer. Id.
9. Medical Examiner Potter refused to care for injuries Shelton allegedly sustained and refused to provide Shelton with pain medication. Id.
10. Finally, Lt. Galletta punched and slammed Shelton up against the wall and placed him in restraints. Id.<sup>1</sup>

**B. Facts regarding the August 30, 2009 incident.**

11. Records indicate that on August 30, 2009, Officer Raup was assigned to the Z block, third floor No. 2 post; Officer Whittaker was assigned to the Z block, second floor No. 2 post; Lt. Heath was working the SIS Lieutenant No. 2 post; Lt. Galletta was the West Side Lieutenant; and EMT Potter was the medical staff working the day watch shift. Declaration of Michael S. Romano (Ex. 1) ¶ 5; Daily Assignment Roster (Att. B to Romano Decl. (Ex. 1)).

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<sup>1</sup> Defendants concede that Shelton exhausted administrative remedies with regard to his claims.

12. The incident which is the subject of Shelton's remaining claims was described as follows:

On August 30, 2009, at approximately 12:33pm, Z-Block first floor staff called for assistance at cell #122 after observing inmate Brooke Graham . . . strike inmate Norman Shelton . . . with closed fist punches while inmate Shelton was in hand restraints. Upon the arrival of the East Lieutenant and additional staff, the inmates were ordered to separate and submit to hand restraints to which they complied. As inmate Graham was being removed from the cell, inmate Shelton charged at inmate Graham and attempted to kick him. The East Side Lieutenant deployed a two second burst with a MK-09 OC Streamer at the facial area of inmate Shelton to stop the attempted assault. Inmate Shelton was ordered to lay on the ground, but refused. The Activities Lieutenant attempted to deploy three rounds from a pepper ball launcher, but the delivery system malfunctioned. Staff entered the cell and placed inmate Shelton on the ground. Inmate Shelton was removed from the cell, decontaminated, and medically assessed. Inmate Shelton was found to have sustained a 1 cm laceration to the right lower lip, minor swelling on the right cheek, minor abrasions to both knees, and wrist pain to both wrists. Inmate Graham was medically assessed and found to have sustained a 1 mm abrasion of the left ring finger. No staff injuries were reported.

Report of Incident Packet (Att. C to Romano Decl. (Ex. 1)) at 3.

13. Officer's Whittaker and Raup both reported that when inmate Graham began assaulting Shelton, he was given several orders to cease and submit to hand restraints, which he refused. See id. at 5, 7.

14. Lt. Benfer then arrived and gave inmate Graham an order to stop or he would be sprayed with OC. Id.
15. Inmate Graham then complied and submitted to hand restraints. Id.
16. When sufficient staff was present, Lt. Benfer ordered the cell door opened to remove the inmates, and it was at that moment that Shelton “charged from the back of the cell and tried to kick inmate Graham.” Id. at 6.
17. Staff entered the cell and took Shelton to the ground to gain control of the inmate. Id.
18. After the incident, Shelton was placed in a holding cell, decontaminated with water because of the use of OC spray, and his clothes were replaced. Id.
19. At 1:25pm , EMT Potter conducted an injury assessment and treated Shelton’s injuries. Id. at 8, 18-20.
20. It was noted that Shelton complained of pain in both wrists, that there was no deformity, good distal pulses and “CAP refill in both hands.” Id. at 19.
21. Shelton’s injuries were described as “a split lower lip on the inside and right side of the mouth. Id.
22. Minor swelling noted of the right cheek by mouth. Id.

23. Minor abrasions noted anterior of both knees.” Id. at 20.
24. Shelton was given a tetanus injection and his wounds were cleaned. Id. at 19, 20.

Respectfully submitted,

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Date: December 15, 2011

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on December 15, 2011, she served a copy of the attached

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via the Court's Electronic Case Filing System ("ECF") and that the Addressee(s) listed below are filing users under the ECF system. Upon the electronic filing of a pleading or other document, the ECF system will automatically generate and send a Notice of Electronic Filing to all filing users associated with this case. Electronic service by the Court of the Notice of Electronic Filing constitutes service of the filed document, and no additional service upon the filing user is required.

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